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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/990,601	11/21/2001	John E. Krech	57135US002	3879

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EXAMINER

AUGHENBAUGH, WALTER

ART UNIT	PAPER NUMBER
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1772

3

DATE MAILED: 02/20/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/990,601

Applicant(s)

KRECH ET AL.

Examiner

Walter B Aughenbaugh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 18-23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-17, drawn to a plastic shipping or storage container, classified in class 428, subclass 35.7.
  - II. Claim 18-23, drawn to a curable polymeric composition and method of making a plastic shipping or storage container, classified in class 264, subclass 209.1.
2. Inventions II and I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product as claimed can be made by a materially different process such as applying the friction material to the molded article after curing via adhesive.
3. During a telephone conversation with Lucy C. Weiss on January 15, 2003 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-17. Affirmation of this election must be made by applicant in replying to this Office action. Claim 18-23 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.
4. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

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5. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

6. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

***Claim Rejections - 35 USC § 112***

7. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

8. Claim 1 is rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for a pallet, does not reasonably provide enablement for a container. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with these claims. While Applicant is entitled to use Applicant's own lexicography (Applicant states "a particularly useful shipping and storage container is the pallet (a structural platform...)" on page 1 line 14-15, pallets are not containers, but "platforms" that hold cargo, etc.

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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10. Claims 1-5, 7 and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 1, the inconsistency between “shipping or storage” (first line of claim) and “shipping and storage” (fifth line of claim) must be rectified. “Including” is indefinite since it is unclear whether this term is intended to be an open or closed transitional phrase indicator. Please replace with “consisting” or “comprising”.

The term "effective" in claims 1 and 2 is a relative term which renders the claim indefinite. The term "effective" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

In regard to claim 1, the claim should positively set forth the purpose of the container and the structure necessary for carrying out the purpose, i.e., the claim is incomplete in regard to the structure of the container. No structure is claimed for the container; therefore, the scope of the claim cannot be ascertained.

In regard to claim 3, “RFID” must be written out in full.

In regard to claim 4, the phrase “meets the requirements of Underwriters Laboratories (UL) 2335 protocol for shipping containers” is indefinite. The specification does not define what these requirements are or provide the particulars of Applicant’s invention that are responsible for the achievement of these requirements. This is not Applicant’s invention as this is an established standard.

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In regard to claim 5, the recitation “the hydrocarbon polyolefin is present in a range of 25 to 99 parts by weight of the total composition” renders the claim indefinite because it conflicts with the previous recitation of “25 to 99 parts by weight” in the claim.

In regard to claim 7, the phrase “present in the range of more than 0 to 70 parts by weight” is indefinite. For instance, a value of 2 parts by weight falls within the claimed range because 2 is more than 0.

In regard to claim 8, the structure intended to be recited by the phrase “open deck design” is indefinite.

In regard to claim 8, the claim should positively set forth the purpose of the pallet and the structure necessary for carrying out the purpose, i.e., the claim is incomplete in regard to the structure of the pallet. No structure is claimed for the pallet; therefore, the scope of the claim cannot be ascertained.

### ***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

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4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

12. Claims 1, 2 and 5-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nagano et al. in view of Nishitani et al.

In regard to claims 1 and 8-10, Nagano et al. teach a pallet containing polyolefin, epoxy resin and a fire proofing agent (page 3, paragraph 0007 of Public Report of Disclosure of Patent). Epoxy resin is a thermosetting resin. According to Applicant's lexicography, a pallet is a shipping and storage container (page 1, line 14 of specification). Nagano et al. fail to teach that the container comprises an effective amount of a friction material on at least one surface thereof. Nishitani et al. however, teach a plastic pallet having at least one kind of antislip means on its surface (items 6, 7, 8, Figure 1 and col. 4, line 36-col. 5, line 2). Therefore, one of ordinary skill in the art would have recognized to have provided at least one of the anti-slip means of Nishitani et al. to the pallet of Nagano et al. since it is notoriously well known to provide pallets with antislip means as taught by Nishitani et al.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided at least one of the anti-slip means of Nishitani et al. to the pallet of Nagano et al. since it is notoriously well known to provide pallets with antislip means as taught by Nishitani et al.

In regard to claim 2, Nagano et al. teach that the pallet includes a fire proofing agent such as antimony trioxide (page 3, paragraphs 0007 and 0008 of Public Report of Disclosure of Patent).

In regard to claim 5, Nagano et al. teach that the polyolefin (a polypropylene) is present in an amount of 80 parts per weight (ppw) of the total composition and that the epoxy is present

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in an amount of 3 parts per weight (ppw) of the total composition (page 5, paragraphs 0023).

The polypropylene is a fully prepolymerized uncrosslinked hydrocarbon polyolefin.

In regard to claims 6 and 11, the uncrosslinked prepolymerized polyolefin is polypropylene, which is a homopolymer (as claimed in claim 6) and an alpha-olefin (as claimed in claim 11).

In regard to claim 7, the antimony trioxide fire proofing agent is present in an amount of 17 parts per weight (ppw) of the total composition (page 5, paragraphs 0023). This amount falls within the claimed range of "more than 0 to 70 parts by weight of the weight of the total composition".

In further regard to claim 8, "optionally having an open deck design" is not a positive recitation.

13. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nagano et al. in view of Nishitani et al. and in further view of Radican.

Nagano et al. and Nishitani et al. teach the container as discussed above. Nagano et al. and Nishitani et al. fail to teach the container further comprises RFID tags. Radican, however, teaches the use of radio frequency identification (RFID) tags on pallets (col. 14, line 33) to enable the rapid acquisition and updating of container location and status (col. 13, lines 19-22). Therefore, one of ordinary skill in the art would have recognized to have provided RFID tags to the pallet of Nagano et al. and Nishitani et al. in order to enable the rapid acquisition and updating of container location and status as taught by Radican.



It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided RFID tags to the pallet of Nagano et al. and Nishitani et al. in order to enable the rapid acquisition and updating of container location and status as taught by Radican.

14. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nagano et al. in view of Nishitani et al., and in further view of Adedeji et al.

Nagano et al. and Nishitani et al. teach the container as discussed above. Nagano et al. and Nishitani et al. fail to teach the plastic container meets the requirements of UL 2335 protocol for shipping containers. Adedeji et al., however, teach pallets that comprise at least one resin selected from a group including thermosetting resins that passes the UL 2335 protocol for pallets (page 1, lines 1-10). It would have been well within the skill of one of ordinary skill in the art to vary the relative amounts of the components of the composition of the pallet of Nagano et al. and Nishitani et al., if necessary, through routine experimentation, to achieve a container that meets the UL 2335 protocol requirements for pallets as taught by Adedeji et al.

15. Claims 12-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nagano et al. in view of Nishitani et al., and in further view of Perez et al.

Nagano et al. and Nishitani et al. teach the container as discussed above.

In regard to claim 12, Nagano et al. and Nishitani et al. fail to teach that the polymeric composition further comprises at least one of a photoactivatable catalyst and a thermal curing agent. Perez et al. teach a polymer network that is applied to a storage vessel (col. 3, lines 24-25) comprising a thermally cured epoxy resin, a fully prepolymerized hydrocarbon polyolefin and optionally a fully prepolymerized functionalized polyolefin resin (col. 3, lines 8-12). Perez et al. also teach that the epoxy resin is cured by a photoactivatable cationic catalyst in another

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embodiment (col. 3, lines 13-17 and col. 23, lines 40-42). In regard to claims 13 and 14, Perez et al. teach that the photoactivatable cationic catalyst is an onium salt photoinitiator or a cationic organometallic complex salt (col. 23, lines 43-47) and that the thermal curing agent is an aromatic or aliphatic primary, secondary or tertiary amine (col. 23, lines 48-49). In regard to claims 15-17, Perez et al. teach that the composition is a foam, is cured and is a semi-interpenetrating polymer network (col. 23, lines 54-55 and 58-59). One of ordinary skill in the art would have recognized to have used the polymeric composition of Perez et al. as a component of the pallet of Nagano et al. and Nishitani et al. since the polymeric composition of Perez et al. is applied to a storage vessel as taught by Perez et al.

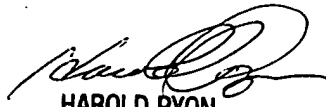
It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used the polymeric composition of Perez et al. as a component of the pallet of Nagano et al. and Nishitani et al. since the polymeric composition of Perez et al. is applied to a storage vessel as taught by Perez et al.

### ***Conclusion***

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter B Aughenbaugh whose telephone number is 703-305-4511. The examiner can normally be reached on Monday-Friday from 9:00am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached on 703-308-4251. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

  
HAROLD PYON  
SUPERVISORY PATENT EXAMINER  
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